

EXHIBIT B

2842/1.8

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

* * * * *

UNITED STATES OF AMERICA *

vs. *

CRIMINAL ACTION

No. 04-10150-RGS

WARNER-LAMBERT COMPANY LLC *

* * * * *

BEFORE THE HONORABLE RICHARD G. STEARNS
UNITED STATES DISTRICT JUDGE
WAIVER, CHANGE OF PLEA AND SENTENCING HEARING

A P P E A R A N C E S

OFFICE OF THE UNITED STATES ATTORNEY

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Boston, Massachusetts 02210

for the United States

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Sara M. Bloom, AUSA

Jill Furman, Trial Attorney

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for the defendant

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Martine M. Beamon, Esq.

Courtroom No. 21

John J. Moakley Courthouse

1 Courthouse Way

Boston, Massachusetts 02210

June 7, 2004

2:30 p.m.

6/7/04

APPEARANCES, CONTINUED

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for the defendant
By: David B. Chaffin, Esq.

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1 **MR. TEICHER:** My name is Martin Teicher. I am
2 a Vice President of Warner-Lambert Company LLC.

3 **THE COURT:** All right. Mr. Teicher, you are
4 familiar with what purports to be the minutes of the meeting
5 held by the managers of Warner-Lambert on May 11, 2004?

6 **MR. TEICHER:** I am on the Board of Directors
7 of Warner-Lambert.

8 **THE COURT:** And this resolution authorizes you
9 to, in fact, appear for Warner-Lambert as attorney in fact;
10 am I correct?

11 **MR. TEICHER:** Yes.

12 **THE COURT:** And the action of the Board of
13 Directors in enacting this resolution was in the authority
14 of the Board under the Articles of Incorporation?

15 **MR. TEICHER:** I believe so, Your Honor.

16 **THE COURT:** All right. Have you discussed --
17 and, again, I am asking more by way of formality, but it is
18 an important question.

19 Have you discussed with counsel what it means for
20 the corporation to waive indictment in this case?

21 **MR. TEICHER:** Yes.

22 **THE COURT:** Do you understand that the crimes,
23 although they are treated as felonies because of a prior
24 conviction of the company, are nonetheless charged as
25 misdemeanors? Ordinarily the prosecutor has no authority on

1 his or her own to bring in the form of an indictment a
2 felony or a charge with the consequence of a felony crime
3 without obtaining the prior permission of a citizen panel
4 called a grand jury to do so.

5 By waiving indictment in this case, Warner-Lambert
6 is permitting the government to proceed as if it, indeed,
7 had the consent of the grand jury to bring these charges.
8 Although this is captioned as an "Information," the crimes,
9 again, as I stated before are felonies.

10 Do you understand that Warner-Lambert by agreeing
11 to waive indictment is giving up its right to require the
12 government to present this case first to a grand jury to
13 obtain the acquiescence of a grand jury in the Information?

14 MR. TEICHER: I do understand that, Your
15 Honor.

16 THE COURT: Is it the advice of counsel that
17 it is in the best interests of the corporation to proceed by
18 waiver of indictment?

19 MR. TEICHER: Yes, Your Honor.

20 THE COURT: Does either counsel or Mr. Teicher
21 know of any untoward threats or inducements that were given
22 to Warner-Lambert to bring about the waiver of indictment in
23 this case?

24 MR. TEICHER: No.

25 MR. ROUHANDEH: No, Your Honor.

1 The sale of the drug with the tradename Neurontin
2 was introduced in interstate commerce for unapproved uses
3 and without prior FDA approval.

4 This crime, like Count 2, is a direct liability
5 offense, that is, the government would not have to prove
6 scienter but would have to prove the four elements I just
7 described.

8 So too with Count 2 which alleges distribution of a
9 misbranded drug. As framed this would require proof of a
10 prior conviction under the same operative statutes, the sale
11 of the drug under the tradename Neurontin in interstate
12 commerce, and unapproved uses without adequate directions
13 being provided to physicians and consumers for such uses.

14 These would be the elements that the government
15 would have to prove.

16 Do I have them correctly stated, Counsel?

17 **MR. KANWIT:** Yes, you do, Your Honor.

18 **MR. ROUHANDEH:** Yes, Your Honor.

19 **THE COURT:** Do you understand that --

20 **MR. TEICHER:** Yes.

21 **THE COURT:** -- that is what would be involved?

22 All right. Now, let me ask Mr. Kanwit to
23 explain -- and I realize that there is more art than perhaps
24 science in this -- but explain the maximum penalties to the
25 offense.